

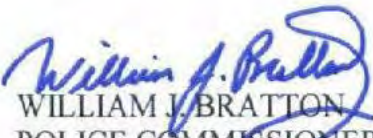


POLICE DEPARTMENT

-----X  
In the Matter of the Disciplinary Proceedings :  
- against - : FINAL  
Lieutenant Robert Sung : ORDER  
Tax Registry No. 900667 : OF  
Military & Extended Leave Desk : DISMISSAL  
-----X

Lieutenant Robert Sung, Tax Registry No. 900667, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2016-15216, as set forth on form P.D. 468-121, dated February 4, 2016, and after a review of the entire record, has been found Guilty as charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Lieutenant Robert Sung from the Police Service of the City of New York.

  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. February 10, 2016



POLICE DEPARTMENT

February 10, 2016

-----X  
In the Matter of the Charges and Specifications : Case No.  
- against - : 2016-15216  
Lieutenant Robert Sung :  
Tax Registry No. 900667 :  
Military & Extended Leave Desk :  
-----X

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Rosemarie Maldonado  
Deputy Commissioner Trials

APPEARANCE:

For the Department: Beth Douglas, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: Edwin Ira Schulman, Esq.  
Attorney At Law  
123-60 83 Avenue, Suite 2K  
Kew Gardens, NY 11415

To:

HONORABLE WILLIAM J. BRATTON  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

**Charges and Specifications:**

1. Said Lieutenant Robert Sung, while suspended without pay, inside of an NYPD facility located in Kings County, on or about February 1, 2016 and February 4, 2016, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that on two (2) separate dates, said Lieutenant failed to comply with an lawful order to appear at an Official Department Interview being held pursuant to Patrol Guide Procedure 206-13.  
P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS  
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

**REPORT AND RECOMMENDATION**

The above-named member of the Department appeared before me on February 9, 2016. Respondent through his counsel, entered a plea of Not Guilty to the subject charge. The Department Advocate's Office called Deputy Inspector Jose Frias, Sergeant Joseph Flynn, Sergeant Samuel Dorisme and Lieutenant Robert Sung as witnesses. Respondent called Inspector Louis Luciani as a witness. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

**DECISION**

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

**FINDINGS AND ANALYSIS**

The following facts are uncontested. Respondent is the subject of an Internal Affairs Bureau investigation and a criminal investigation concerning allegations of corruption including bribe receiving and criminal association. While the investigations were ongoing, Respondent appeared at the Police Pension Fund on January 13, 2016 to submit an application for service retirement. At the time of the application, Respondent had over 20 years of service. His effective date of retirement is scheduled to be February 11, 2016.

On January 22, 2016, Respondent reported to Brooklyn IAB for an Official Department Interview ("PG 206-13 interview") relating to the above mentioned allegations. At that time his duty status was suspended with pay. (Tr. 102) Although he appeared for the interview, on the advice of counsel he refused to answer any questions. He was subsequently suspended without pay.<sup>1</sup> (Tr. 56)

IAB scheduled another PG 206-13 interview of Respondent for February 1, 2016. In an attempt to notify him of the interview, on January 31, 2016, Deputy Inspector Jose Frias, Commanding Officer of IAB Group 32, ordered Sergeants Joseph Flynn and Samuel Dorisme to conduct surveillance of Respondent's residence in [REDACTED] (Tr. 21-22) Frias later ordered IAB Duty Captain Keith Kane to also respond to Respondent's residence. (Tr. 22-23) At 1335 hours, these members of service knocked on Respondent's door. (Tr. 75) Captain Kane verbally ordered Respondent to appear the following day at Brooklyn IAB for a PG 206-13 interview. The specific time and location were provided. (Department's Exhibits ("DX") 5A, 5B) Respondent requested written notification and Sergeant Flynn, after consulting with Deputy Inspector Frias by phone, told Respondent, "As per Deputy Inspector Frias, you're ordered to come in tomorrow. That's your notification." Respondent informed Sergeant Flynn, "My attorney is not even available tomorrow." This conversation was recorded. (DXs 5A, 5B)

Respondent did not appear at the February 1, PG 206-13 interview. (Tr. 26-27, 91) Frias notified the Department Advocate's Office of Respondent's absence. (Tr. 27)

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<sup>1</sup> Respondent's refusal to answer questions at the January 22, 2016 interview was the subject of a Department trial held on January 28, 2016. Following trial, this tribunal determined that because Respondent and his counsel, upon request, were not provided with a list of relevant complaining witnesses, as required by P.G. 206-13(2)(f), Frias' order that Respondent answer questions was beyond the scope of his supervisory authority. As such, Respondent was found to have committed no misconduct in declining to answer. These findings were approved by the Police Commissioner on February 3, 2016. See Case No. 2016-15116 (February 3, 2016).

At some point during that day Inspector Louis Luciani, Commanding Officer of the Department Advocate's Office, spoke to Respondent's counsel regarding Respondent's PG 206-13 interview. (Tr. 83-87)

A February 4, PG 206-13 interview was arranged. At 0950 hours on February 2, 2016, Deputy Inspector Frias travelled to Respondent's residence and verbally ordered him to report to Brooklyn IAB on February 4 at 1200 hours for his PG 206-13 interview. (Tr. 29-30) Deputy Inspector Frias also provided Respondent with a written notification, which Respondent signed. (DX 1) Deputy Inspector Frias further reminded Respondent that he was required to report to his resident precinct on Mondays, Wednesdays, and Fridays while suspended. (Tr. 29-30) The following day, Respondent reported to the 111 Precinct and signed in. (DX 2)

On February 4, 2016, Respondent again failed to appear for the scheduled PG 206-13 interview. (Tr. 36, 96) At 1230 hours, Deputy Inspector Frias notified the Department Advocate's Office and asked that Charges and Specifications be prepared. (Tr. 36-38)

At 2155 hours on February 5, 2016, Respondent reported to the 111 Precinct, signed in, and was given a message to call Deputy Inspector Frias. (Tr. 40-43) Deputy Inspector Frias told Respondent that he was going to be served with Charges and Specifications. Respondent stated that he would be at his residence that evening. At 2310, Deputy Inspector Frias served Respondent with the above noted Charges and Specifications. (Tr. 43) He also ordered him to appear for a Departmental trial on February 9. (Tr. 44-45) Upon Respondent's request, Deputy Inspector Frias also gave Respondent a written notification to appear for trial. (DX 4)

As set forth above, Respondent does not dispute that he did not show up for the February 1 and February 4 PG 206-13 interviews after having been directed to do so by superior officers. At issue here is whether Respondent's admitted failure to appear constitutes misconduct. I find that it does.

Patrol Guide Section 203-03, page 1, para 2, specifically requires that members of service, "Obey lawful orders and instructions of supervising officers." It is a basic tenet of public employment law that employees are generally required to "obey now, grieve later." Exceptions to this principle are very limited. For example, an employee need not obey an unlawful order, an order that is beyond the scope of a supervisor's authority, or an order that poses an imminent threat to health or safety. See *Ferreri v. NY State Thruway Authority*, 62 N.Y.2d 855 (1984); *Reisig v. Kirby*, 62 Misc.2d 632 (Sup. Ct. Suffolk County 1968), *aff'd*, 31 A.D.2d 1008 (2d Dep't 1969).

Respondent argued at trial that he was not required to appear at the scheduled PG 206-13 interviews because the orders issued by Deputy Inspector Frias and Captain Kane were unlawful. Specifically, Respondent contends that because his duty status was suspended without pay, obeying an order to report to IAB would have been the equivalent of compelling him to "work" without due compensation – a clear violation of the Labor Law. For the reasons set forth below, I find that this argument has no merit.

First, at trial Inspector Luciani credibly testified that when the Department orders a member of service who is suspended without pay to make an appearance, he or she is entitled to "pay for the day." Requests for such compensation can be made to the Department's Payroll Division. (Tr. 87-88) Second, Deputy Inspector Frias credibly testified at trial that he informed Respondent that he would be paid for any "ordered"

appearances while suspended without pay. Specifically, he testified that on January 22, 2016, he told Respondent that “he will be compensated for coming to the Advocate’s Office or any time that he worked.” He added that if there were any “issues” with respect to compensation, Respondent should state that he had been ordered to appear by a Deputy Inspector. Frias advised him in this manner because Respondent “was concerned [about] not getting paid.” (Tr. 47-48, 51) Third, Administrative Guide 318-17 sets forth a procedure for the Restoration of Time, Pay and Benefits for suspended members. The section specifically states that its purpose is “To ensure restoration of time, pay and benefits to members of the service entitled to such benefits upon completion of the disciplinary process.” Fourth, failure to receive compensation is a contractual issue for which redress can be obtained through the grievance process. Pursuant to Administrative Guide 320-13, even if a grievance is filed, the grievant must “continue to perform assigned duties and obey lawful orders.”<sup>2</sup>

Finally, it is important to note that members who are suspended, even without pay, still fall within the jurisdiction of the Department. (Tr. 51) Numerous Patrol Guide sections address the responsibilities of members while on paid or unpaid suspension. For example, Patrol Guide 205-40 addresses off duty employment and states that, “During a period of suspension without pay ... the member concerned remains officially a member of the service and as such may NOT engage in any type of employment or activity which, by existing law, is prohibited to police officers....” Patrol Guide 206-08 requires that members who are suspended report to their resident precinct three times a week. (Tr. 94)

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<sup>2</sup> Respondent also argued that he could not appear at the interviews because pursuant to Patrol Guide 206-08, he could not be reinstated, and therefore paid, until February 6, 2016 – after the scheduled interview dates. Patrol Guide 206-08 is inapplicable to this case. The quoted section applies to restoration to duty and does not address compensation for a member who is ordered to report to IAB while still on suspension.



In addition, it is well established that members can be disciplined for their conduct while on suspension. *See Case No. 70472/95* (Feb. 22, 1996). Ordering a suspended member of service to appear at an investigatory interview clearly falls within these parameters.

Also unavailing was Respondent's argument that the short notice for the February 1 PG 206-13 interview effectively denied him "a reasonable period of time to obtain and confer with counsel prior to questioning." *Patrol Guide 206-13 Note*. First, as noted on the record, many of the abbreviated timeframes imposed on this proceeding were dictated by Respondent's submission of a retirement application effective February 11, 2016. Second, the order at issue was for Respondent to appear and not an order to answer questions. Respondent's argument that he was deprived of counsel might have carried more weight had Respondent not willfully absented himself from the interviews and had then been confronted with questions in the absence of his representative.<sup>3</sup>

Accordingly, Respondent is found guilty of the charged misconduct.

### PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 13, 1992. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of failing to comply with lawful orders, issued on two separate dates, to appear for Official Department Interviews scheduled for

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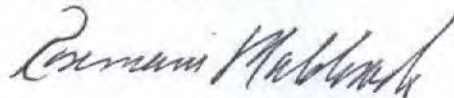
<sup>3</sup> There was insufficient evidence to support Respondent's argument that the February 1 interview was "rescheduled" or "adjourned." It is dispositive that Inspector Luciani credibly affirmed at trial that he did not excuse Respondent from complying with the January 31 order to appear at the scheduled interview. (Tr. 86).



February 1 and February 4, 2016, pursuant to Patrol Guide Section 206-13. This tribunal has consistently held that failure to comply with an order to cooperate at a PG 206-13 interview is grounds for termination. *See Case No. 11792/14* (May 23, 2014) (Thirty-one-year detective is dismissed from the Department for failing to comply with an order to answer questions during an official Department interview). Here, Respondent twice refused to cooperate with this Department's internal investigation concerning troubling charges of misconduct. The profound impact of Respondent's transgressions cannot be underestimated.

Accordingly, based on the totality of the evidence and testimony presented at trial, and consistent with Department precedent, I recommend that Respondent be DISMISSED from the Department.

Respectfully submitted,



Rosemarie Maldonado  
Deputy Commissioner Trials

**APPROVED**

FEB 10 2016  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT ROBERT SUNG  
TAX REGISTRY NO. 900667  
DISCIPLINARY CASE NO. 2016-15216

Respondent was appointed to the Department on January 13, 1992. His last three annual performance evaluations were 4.0 "Highly Competent" in 2015, and 4.5 "Highly/Extremely Competent" in 2014 and 2013. He has no medals.

[REDACTED]  
[REDACTED] He was suspended without pay on December 8, 2015.  
Respondent remains on suspension.

[REDACTED]  
For your consideration.

Rosemarie Maldonado  
Deputy Commissioner Trials